Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and	)	CC Docket No. 98-56
Reporting Requirements	)	RM-9101
For Operations Support Systems,	)	
Interconnection, Operator Services	)	
And Directory Assistance	)	

COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

The Competitive Telecommunications Association ("CompTel") strongly supports the FCC's proposal to establish performance measurements and reporting requirements for the provision of operations support systems ("OSS") by incumbent local exchange carriers ("ILECs") under the Telecommunications Act of 1996 and the FCC's implementing rules. Given the ILECs' persistent refusal to comply with their OSS obligations under the statute and the FCC's rules, those performance measurements and reporting requirements are necessary to spur compliance and to facilitate the establishment of meaningful local competition.

At the same time, CompTel urges the FCC to adopt mandatory rules, not model rules, as both CompTel and LCI proposed to the FCC last year. Model rules will create further delays in achieving nondiscriminatory access to OSS, thereby postponing the advent of true local competition across the nation. Further, to the extent that States adopt different rules, or no rules at all, the usefulness of these performance measurements and reporting requirements will be diminished significantly. Parties must be able to compare data on a regional and national basis in order to effectively monitor the ILECs' OSS capabilities and enforce the statutory and regulatory OSS rules. Adopting the minimum necessary performance measurements and reporting requirements would not impede any State commission that wished to impose more rigorous requirements upon the ILECs.

Mandatory rules are fully consistent with the FCC's authority to implement the statute. The FCC's authority to implement Section 251(c)(3) has been upheld, and it has plenary authority to enforce violations of that provision and related FCC rules through Section 208 complaint proceedings.

Further, minimum national requirements are essential to generate the data necessary for the development of OSS performance benchmarks. CompTel strongly urges the FCC to take a pro-active role in working with State commissions and the industry to develop such standards, which ultimately will become the best means of ensuring full ILEC compliance with their statutory and regulatory OSS obligations.

CompTel also submits that mandatory performance measurements and reporting requirements are particularly important for the FCC to review Bell Companies' applications for in-region interLATA authority under Section 271, and to determine whether mergers involving ILECs promote the public interest.

Lastly, CompTel urges the FCC to adopt necessary remedies and enforcement mechanisms to ensure that ILECs provide nondiscriminatory access to OSS. CompTel and LCI proposed a number of remedies that would make persistent ILEC non-compliance with their OSS obligations less attractive. Further, CompTel urges the FCC to establish an "Accelerated Docket" option so that parties can use the data produced by the performance measurements and reporting requirements to litigate quickly, finally and fairly any ILEC's refusal to provide nondiscriminatory access to their OSS capabilities.

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The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits these comments on the Commission's Notice of Proposed Rulemaking ("NPRM") released on April 17, 1998 in the above-captioned dockets.

Introduction

CompTel supports and commends the Commission for proposing specific performance measurements and reporting requirements for operations support systems ("OSS"), interconnection, operator services and directory assistance. However, CompTel respectfully submits that the Commission's proposal to adopt these measures as *models* rather than *rules* amounts to an abdication of the role assigned to it by Congress. CompTel believes that the Commission's adoption of *binding* minimum default rules, as jointly proposed by CompTel and LCI International Telecom Corp. ("LCI") in their Petition for Expedited Rulemaking ("LCI/CompTel Petition") filed with the Commission a full year ago[1] – and not mere models –

[1] The LCI/CompTel Petition was filed with the Commission on May 30, 1997. Comments and replies on the petition were filed on July 10. 1997 and July 30, 1997, respectively, in RM-9101.

would be most efficient and effective in aiding incumbents to demonstrate, competitors to measure, and the FCC and state commissions to enforce compliance with the Sections 251(c)(3) and (4) of the Telecommunications Act of 1996 ("1996 Act").[2]

Adopting model rather than mandatory rules merely will delay the day on which competitors can enter local markets freely and consumers can reap the benefits of finally having a choice in local service and one-stop shopping providers. Therefore, the Commission should use its jurisdiction to clarify and enforce its rules implementing the requirements set forth in Section 251 of the 1996 Act. The Eighth Circuit's *Iowa Utilities Board* decision upheld the Commission's authority to require the provisioning of access to OSS on a nondiscriminatory basis. Also, it is clear that Section 208 vests the Commission with authority to enforce its rules. Moreover, the establishment of binding national rules is consistent with State commission requests for guidance. CompTel believes that the Commission and the States both have vital and compatible roles in ensuring nondiscriminatory access to OSS. The Commission's role is not limited to that of merely advising the State commissions.

Consistent with the Commission's mandate to encourage the development of local competition and ensure the provisioning of nondiscriminatory access to OSS, CompTel believes that the Commission must do more than what is proposed. CompTel submits that mandatory rules are particularly important in connection with the regional Bell operating companies' ("RBOC") Section 271 applications and requests for approval of ILEC mergers. This can be done by establishing a policy whereby compliance with the proposed performance measurement and reporting requirement rules will be a precondition for Commission approval of all Section 271 and ILEC mergers applications.

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[2] Pub. L. No. 104-104, 110 Stat 56, *codified at* 47 U.S.C. §§ 151 *et seq.*, *amending* the (continued...)

The FCC also must take prompt and affirmative action to work with the State commissions to establish performance benchmarks. Minimum or default performance benchmarks can help establish a level of access to OSS that is just and reasonable in cases where ILECs are unwilling to measure or report their own performance.

Finally, the Commission must promptly consider and adopt meaningful remedies for ILEC non-compliance with its OSS rules. The remedies proposed in the LCI/CompTel Petition would bolster local competition by providing strong incentives for ILECs to comply – and stay in compliance – with the Commission's OSS rules. The Commission also should adopt the "Accelerated Docket" for complaint adjudication proposed in CC Docket No. 96-238, incorporating the modifications recommended by CompTel in its comments filed in that docket on January 12, 1998.[3]

I. THE COMMISSION CAN ADVANCE LOCAL COMPETITION MOST EFFICIENTLY AND EFFECTIVELY BY ADOPTING BINDING NATIONAL RULES THAT WILL AID IN DEMONSTRATING, MEASURING AND ENFORCING COMPLIANCE WITH THE ACT

If OSS is as important as the Commission says it is – and it is – *and* if the incumbent LECs have failed to provide the nondiscriminatory access required by the Act – and they have – *then,* model performance measurements and reporting requirements do not go far enough toward mending this disconnect. All of the reasons cited by the Commission for adopting performance measurements and reporting requirements are compelling – but the arguments cited for making them non-binding are not. Mandatory rather than model rules are necessary to force the ILECs

(...continued)
Communications Act of 1934 ("Act").

3 *Implementation of the Telecommunications Act of 1996 – Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers,* CC Docket No. 96-238.

to comply with their statutory and regulatory obligations. In short, there is a stark need for immediate new incentives for ILECs to comply with the OSS unbundling rules. Those incentives should come in the form of enforcement. National rules setting forth minimum default standards will facilitate enforcement. In so doing, they serve as the best hope for ensuring the nondiscriminatory access to OSS upon which competitive local markets must be built.

A. Local Competition Has Been Delayed Because Nondiscriminatory Access to OSS Is Essential and Has Not Been Provided

On August 8, 1996, in its First Report and Order in CC Docket No. 96-98 ("*Local Competition Order*"), the Commission concluded that Sections 251(c)(3) and (4) of the 1996 Act require ILECs to provide CLECs with nondiscriminatory access to OSS on terms and conditions that are just and reasonable.[4] Moreover, the Commission determined that (1) the term "nondiscriminatory," as used throughout Section 251 of the Act, requires parity in the terms and conditions that an ILEC imposes on itself and new entrants;[5] and (2) the terms "just " and "reasonable," also used throughout Section 251, require ILECs to "provide an efficient competitor with a meaningful opportunity to compete."[6] Without equal access to OSS, the Commission concluded, CLECs will be "severely disadvantaged, if not precluded altogether, from fairly competing."[7] Finding that nondiscriminatory access to OSS is "vital to creating

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4 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 517 (1996) [hereinafter "*Local Competition Order*"].

5 *See id.* ¶¶ 218, 312.

6 *Id.* ¶ 315.

7 *Id.* ¶ 518.

opportunities for meaningful competition,"[8] the Commission ordered ILECs to provide nondiscriminatory access to OSS no later than January 1, 1997.[9]

January 1, 1997 came and went without ILEC waiver requests or any evidence that ILECs, by and large, had begun to provide access to OSS in compliance with the Act. Amid mounting evidence that the ILECs, in fact, had failed to meet the Commission's January 1, 1997 deadline and had not begun to provide nondiscriminatory access to OSS, CompTel joined LCI in petitioning the Commission on May 30, 1997 to adopt rules designed to provide ILECs with incentives to comply with their OSS obligations.

Specifically, the LCI/CompTel Petition asked the Commission to establish:

(1) performance measurements and reporting requirements for the provision of OSS functions;

(2) default performance standards or benchmarks that would apply when an ILEC fails or refuses to report its performance;

(3) technical standards for OSS interfaces if industry fora fail to adopt standards for OSS interfaces by a date certain; and

(4) remedial provisions that would apply to non-compliant ILECs.

The proposed performance measurements and reporting requirements would serve to aid ILECs in demonstrating, and competitors in measuring, compliance with the Act. The proposed default performance intervals or benchmarks would encourage ILECs to measure and report performance in a way that facilitates comparisons necessary to determine compliance. The proposed action regarding technical standards would spur the industry to move forward in

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8 *Id.*

9 *Id.* ¶ 525. Significantly, the Commission also observed that, "[d]epending upon the progress made [in industry adoption of OSS standards], we will make a determination in the near future as to whether our obligations under the 1996 Act require us to issue a separate notice of proposed rulemaking or take other actions" necessary to arrive at the appropriate OSS standards. *Id.* ¶ 528.

adopting standard interfaces that would reduce costs and implementation burdens for incumbents and competitors alike. Significantly, each of these steps would facilitate enforcement of OSS obligations by both the Commission and its State counterparts. Finally, the proposed remedial measures would provide incumbents with additional incentives to comply with their OSS obligations.

Comments and replies were filed on July 10, 1997 and July 30, 1997, respectively, demonstrating widespread support for the proposals contained in the Petition.[10] Some competitors focused on the ILECs' unwillingness and inability to provide OSS in a nondiscriminatory manner.[11] NARUC and the California Public Utilities Commission also recognized the need for national guidelines.[12]

Shortly thereafter, on August 19, 1997, the Commission issued its decision on the first of three RBOC Section 271 applications it would deny primarily on the basis of its finding that the applicant failed to provide nondiscriminatory access to OSS.[13] In rejecting Ameritech's application for interLATA authority in Michigan, the Commission reaffirmed its *Local Competition Order* finding that nondiscriminatory access to OSS was essential to the development of local competition.[14]

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10 *See generally, e.g.,* WorldCom Comments, RM-9101 (filed July 10, 1998); ACSI Comments, RM-9101 (filed July 10, 1998); *but see, e.g.,* Bell Atlantic Comments, RM-9101 (filed July 10, 1998); GTE Comments, RM-9101 (filed July 10, 1998).

11 *See, e.g.,* MCI Comments, RM-9101, at 5 (filed July 10, 1998); WinStar Comments, RM-9101, at 4-6 (filed July 10, 1998); *see also* CompTel Reply Comments, RM-9101, at 21-22 (filed July 30, 1998) (summarizing examples of ILEC OSS provisioning failures provided by CLECs in their comments).

12 *See* NARUC Comments, RM-9101, at 3 (filed July 10, 1998); California Public Utilities Commission Comments, RM-9101, at 7-8 (filed July 10, 1998).

13 *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide in-Region, InterLATA Services In Michigan,* CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 172 (1997).

14 *See, e.g., id.* ¶¶ 130, 132.

On November 11, 1997, NARUC passed a resolution urging the FCC "to move promptly to advance the establishment of performance guidelines that can be used to evaluate the provision of access to the components of OSS functions."[15] This was followed by Commission decisions on December 24, 1997 and February 4, 1998 rejecting BellSouth's Section 271 applications for South Carolina and Louisiana.[16] In each case, the Commission again found the applicant's OSS to be woefully inadequate.[17]

This Spring, more evidence of the ILECs' near universal failure to meet their obligation to provide nondiscriminatory access to OSS on terms that are just and reasonable was submitted to the Commission. Comments submitted in response to the recently filed "Section 706 Petitions" of Ameritech, Bell Atlantic and U S West illustrate that these RBOCs also have yet to establish or provide adequate access to OSS systems.[18]

State commission proceedings also have pointed to the ILECs' failure to meet OSS access obligations. For example, in New York, where Bell Atlantic is making a high profile bid for a New York Public Service Commission recommendation in favor of granting it interLATA

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15 NARUC Convention Floor Resolution No. 5, "Operations Support Systems Performance Standards" (adopted by NARUC Exec. Comm. on Nov. 11, 1997).

16 *Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina,* CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, ¶¶ 101-69 (1997) [hereinafter "*BellSouth-South Carolina Section 271 Order*"]; *Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana,* CC Docket No. 97-231, Memorandum Opinion and Order, 13 FCC Rcd 6245, ¶¶ 21-58 (rel. Feb. 4, 1998) [hereinafter "*BellSouth-Louisiana Section 271 Order*"].

17 *BellSouth-South Carolina Section 271 Order*, ¶¶ 87-88; *BellSouth-Louisiana Section 271 Order*, ¶ 22.

18 *See, e.g.,* AT&T Comments, CC Docket Nos. 98-11, 98-26, 98-32 (RBOC Section 706 Petitions), at 18 (testing in the pre-merger Bell Atlantic states demonstrates that "Bell Atlantic is unable to handle even a minimal amount of orders, much less the volumes required for competitive entry"; Bell Atlantic-New York has not even made available all of the technical specifications, business rules, and other technical and administrative information necessary for CLECs to complete the necessary OSS interfaces).

relief, a test of Bell Atlantic's ability to meet its self-established standards for providing live order confirmation for loops revealed that Bell Atlantic met its target interval only 50 percent, 90 percent and 57 percent of the time over the three day test period.[19]

On April 17, 1998, the Commission issued its NPRM in which it proposed to adopt model performance measurements and reporting requirements. CompTel concurs with all of the reasons put forward by the Commission for establishing performance measurements and reporting requirements. However, CompTel is not persuaded by the reasons offered by the Commission for adopting such performance measurements and reporting requirements in the form of non-binding models, as opposed to binding rules. While CompTel supports State commission initiatives to develop OSS performance measurements, benchmarks and reporting requirements, it also believes that local competition would be advanced most by the existence of minimum default requirements set at the national level.

B. National Minimum Requirements Are Necessary

As the Commission noted in its *Local Competition Order*, uniform general rules complemented by specific State implementation will provide "new entrants, including small competitors, with a meaningful opportunity to compete."[20] CompTel concurs and respectfully submits that the most efficient and effective means of ensuring ILEC compliance with the Commission's OSS requirements is through the adoption of uniform rules set at the national level. Establishing national minimum or default requirements for performance measurements

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19 New York State Public Service Commission, *Petition of New York Telephone Company for Approval of Its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996*, NY PSC Case No. 97-C-0271, Minutes of Technical Conference, at 1579 (Dec. 3-5, 1997).

20 11 FCC Rcd at 15657, ¶¶ 309-310.

and reporting requirements is a good place to start. As with the Commission's unbundling rules, there are tremendous benefits to be gained from having an established baseline from which to operate. These benefits come in the form of settled expectations on the part of ILECs and CLECs alike. The certainty that will result from national rules will reduce litigation and accelerate competitive entry by establishing information resources that can be used by ILECs to demonstrate parity and by CLECs seeking to measure and monitor OSS compliance on their own.

State commissions also will benefit from the establishment of minimum national default rules. As is the case with the Commission's unbundling rules, the states would be free to require more or they could simply rely on the FCC's requirements as a default standard.[21]

National measurement and reporting requirements also are more compatible with the way in which access to OSS is provided. ILECs' OSS typically function on a regional basis. Thus, it would be efficient for both ILECs and CLECs alike to have uniformity in measurement and reporting requirements throughout an ILEC's service territory. State commissions also would benefit by being able to compare readily the performance of an ILEC in adjacent states.

Finally, the establishment of mandatory and uniform national measurement and reporting rules would create a firm foundation for the development of default performance benchmarks. CompTel remains committed to the development of uniform default performance benchmarks and asks the FCC begin work promptly to establish such standards in conjunction with the State commissions.

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[21] To the best of CompTel's knowledge, the Georgia Public Service Commission is, to date, the only State commission to have completed an OSS rulemaking of any kind. Georgia Public Service Commission, *Performance Measurements for Telecommunications Interconnection, Unbundling and Resale,* Georgia PSC Docket No. 7892-U, Order (Dec. 30, 1997).

C. The Commission Has Jurisdiction to Establish Binding Performance Measurement and Reporting Rules

The 1996 Act provides the Commission with jurisdiction to establish regulations to implement, at a minimum, specific portions of Section 251.[22] CompTel commends the FCC for recognizing the important role of the State commissions with respect to implementation and enforcement of the 1996 Act. However, CompTel believes that the opening of local markets to competition will be delayed even further, and unnecessarily so, if the Commission fails to fulfil the role assigned to it by Congress. For all the uncertainty created by the Eighth Circuit's *Iowa Utilities Board* decision, one thing that remains clear is that the Congress vested the Commission with authority to require nondiscriminatory access to OSS *and* to enforce its rules implementing Section 251 of the Act.

1. The Eighth Circuit Found That the Commission Had Jurisdiction to Establish Its OSS Rules

On July 18, 1997, the United States Court of Appeals for the Eighth Circuit upheld the Commission's rules defining OSS as a network element and requiring ILECs to provide nondiscriminatory access to the preordering, ordering, provisioning, maintenance and repair, and billing functions of the ILECs' OSS.[23] In denying the ILECs' jurisdictional challenge to the Commission's unbundling rules, the Court also upheld rules including:

- the requirement that ILECs provide to requesting telecommunications carriers nondiscriminatory access to unbundled network elements, *including OSS*, in accordance with the Commission's rules (47 C.F.R. § 51.307(a));

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22 *See Iowa Utilities Board v. FCC*, 120 F.3d 753, 794, n.10, (8th Cir. 1997), *writ of mandamus issued* 135 F.3d 535 (8th Cir. 1998), *cert. granted* 118 S.Ct. 879 (Jan. 26, 1998) [hereinafter *"Iowa Utilities Board"*].

23 *Iowa Utilities Board*, 120 F.3d at 808.

- the requirement that ILECs provide to requesting telecommunications carriers access to unbundled network elements, *including OSS*, "in a manner that allows the requesting telecommunications carrier to provide any telecommunications service" (47 C.F.R. § 51.307(c));

- a prohibition against limitations, restrictions or requirements imposed by ILECs upon request for or the use of unbundled network elements, *including OSS*, by requesting telecommunications carriers (47 C.F.R. § 51.309(a));

- the requirement that ILECs must ensure that the quality of network elements, *including OSS*, provided to one requesting telecommunications carrier is the same as the quality provided to other requesting carriers (47 C.F.R. § 51.311(a)) and the quality provided to the ILEC itself (47 C.F.R. § 51.311(b));

- a requirement that ILECs establish nondiscriminatory terms and conditions for providing unbundled network elements, *including OSS*, to all requesting telecommunications carriers (47 C.F.R. § 51.313(a)); and

- a requirement that the terms and conditions of providing network elements, *including OSS*, to requesting carriers, including but not limited to the provisioning time intervals, shall be no less favorable to the requesting carrier than the terms and conditions on which the ILEC provides such elements to itself (47 C.F.R. § 51.313(b)).

Based upon the *Iowa Utilities Board* decision, the broad scope of the Commission's network element rules, and the authority of the Commission to identify and define "what network elements should be made available for the purposes of [Section 251(c)(3)],"[24] the Commission plainly has authority to adopt the proposed performance measurement and reporting requirements as *binding* national rules. With respect to the ILECs' Section 251(c)(4) resale obligations, the Commission's OSS requirements merely help define the overall scope of those obligations, which the Eighth Circuit also confirmed the Commission had the authority to do.[25]

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24 47 U.S.C. § 251(d)(2). CompTel merely asks that the Commission "define[] the overall scope of the incumbent obligation," with respect to OSS, similar to the way in which the FCC rule on resale of promotional offerings does. That regulation, Section 51.613 of the Commission's rules, was upheld by the Eighth Circuit. *Iowa Utilities Board*, 120 F.3d at 819.

25 *Id.*

In addition to its rulemaking authority under Section 251, the Commission, for purposes of Section 271 applications, has both the ability and the duty, to define OSS requirements for purposes of measuring RBOC satisfaction of the fourteen-point competitive checklist.[26]

2. The Commission Has the Authority to Enforce Its Own Rules

It should go without saying that Congress did not contemplate that the Commission would adopt rules implementing the requirements of Section 251(c) without having the authority to enforce them. Indeed, the Commission has plenary authority to enforce *all* of its rules, including its existing and – if they were adopted as binding – proposed OSS rules through Section 208 complaints and other federal proceedings (*e.g.*, forfeitures). The Eighth Circuit's ruling that the Commission lacks Section 208 authority to review *agreements* approved by State commissions or to enforce the *terms of such agreements* does not effect the Commission 's authority to interpret, clarify and enforce its own rules.[27] Thus, CompTel maintains that the Commission has clear statutory authority to adopt and enforce performance measurement and reporting requirement rules for OSS.

Finally, the Eighth Circuit underscored that it was not questioning "the FCC's authority to prescribe and enforce regulations" to implement the network element provisions "where Congress expressly called for the FCC's participation."[28] With regard to State authority, the Eighth Circuit declared that "the state commissions' plenary authority to accept or reject [interconnection] agreements necessarily carries with it the authority to enforce the provisions of

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26 47 U.S.C. §§ 271(c)(2)(B)(ii) and (xiv).

27 *See Iowa Utilities Board*, 120 F.3d at 803-804

28 *Id.* at 804.

agreements that the state commissions have approved."[29] So too for the Commission: its plenary authority to adopt rules implementing the network element regime under Sections 251(c)(3) and (d)(2) necessarily carries with it the authority to enforce that regime through Section 208. That result is the only one consistent with the plain language of Section 208, which expressly authorizes (and indeed requires) the Commission to hear and resolve complaints regarding an ILEC's non-compliance with the Commission's regulations, including any regulations properly adopted pursuant to Section 251(d)(2). Inasmuch as the 1996 Act did not amend Section 208, the Commission's Section 208 authority to enforce its OSS rules cannot reasonably be doubted.

II. THE PROPOSED RULES MUST SERVE AS THE STANDARD ON WHICH THE COMMISSION WILL REVIEW SECTION 271 APPLICATIONS AND ILEC MERGERS

CompTel believes that it is particularly important for the Commission to adopt mandatory performance measurements and reporting requirements to facilitate the Commission's statutory review of RBOC Section 271, as well as its review of requests for approval of mergers involving ILECs. The principal benefit of such a policy will be to bolster the development of local competition by making OSS enforcement easier. This policy effectively would require the largest ILECs to comply with the proposed rules,[30] regardless of individual State commission implementation. Thus, the policy has the benefit of making the largest ILECs comply with the models immediately upon adoption by the Commission, rather than at some indefinite point – and to an indefinite extent – in the future. By making compliance a precondition to approval of

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29 *Id.*

30 Such a policy also is consistent with the Commission's desire to limit the burdens placed on small and rural ILECs, as it likely would not effect such companies.

RBOC Section 271 applications and ILEC merger applications, the Commission, consistent with the public interest, can best assure that grant of such applications will help and not hinder the opening of local markets to competition.

The Commission's authority to adopt such a rule or policy cannot reasonably be challenged. With respect to RBOC Section 271 applications, OSS compliance already is a checklist item, thereby confirming the Commission's authority to implement these rules. The policy also is consistent with the Commission's treatment of the Bell Atlantic/NYNEX merger.[31] The Commission also must ensure that approval of both Section 271 applications and mergers is consistent with the public interest. A policy designed to ensure compliance with and facilitate enforcement of the ILECs' OSS obligations under Section 251 is clearly in the public interest as it will do much to ensure the efficient and effective development of local competition.

With such a rule or policy in place, the Commission's proposed measurement and reporting requirements likely will serve as the basis for assessing most claims and defenses in Section 208 formal complaint proceedings concerning compliance with Sections 251(c)(3) and (4). Thus, the policy will facilitate enforcement by making it easier for (1) ILECs to demonstrate compliance, (2) CLECs to monitor and detect discriminatory treatment, and (3) the FCC to compare numbers relied upon by each party.

Finally, CompTel also believes that making compliance with the proposed rules a precondition for Section 271 or ILEC merger approval also will facilitate the development of benchmarks. CompTel maintains its support for the performance standards or benchmarking

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31 *See Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer of Control of NYNEX Corp. and Its Subsidiaries,* File No. NSD-L-96-10, Memorandum Opinion and Order (rel. Aug. 14, 1997) (FCC approved the Bell Atlantic/NYNEX merger subject to enforceable conditions designed to open local markets in the combined Bell Atlantic and NYNEX regions to new competitors and encourage the development of local telecommunications competition).

proposals presented in the LCI/CompTel petition. By effectively requiring the largest ILECs to comply with the performance measurement and reporting requirement rules upon release of the first order in this rulemaking, the Commission will ensure the availability of important information and thereby can accelerate the benchmarking process.

III. THE COMMISSION MUST ADDRESS REMEDIES AND ENFORCEMENT PROMPTLY

Enforcement is the most effective and efficient way in which the Commission can spur ILEC compliance with their OSS obligations and all other local competition related requirements imposed by or pursuant to the 1996 Act. To maximize both the effectiveness and the efficiency of the Commission's enforcement procedures, CompTel believes that meaningful remedies must be put in place. Thus, the Commission should consider (and adopt) the remedies proposed in the LCI/CompTel Petition as soon as possible. Another way in which the Commission can maximize the incentives for compliance given by its enforcement processes is to adopt an "Accelerated Docket" option for adjudication of formal complaints alleging violations of the Act's core local competition provisions.

A. The Commission Needs to Consider the Remedies Proposed in the LCI/CompTel Petition in a Timely Manner

CompTel reaffirms its support for the remedies proposed in the LCI/CompTel Petition and urges the Commission consider (and adopt) them in a timely manner. To maximize ILEC incentives to comply with the Commission's OSS rules, it is important that ILECs are on notice of simple, direct, and meaningful penalties if they fail to comply. Accordingly, CompTel submits that an ILEC's failure to meet OSS parity requirements should trigger a requirement that it provide the effected CLEC with prescribed automatic credits. Fines and forfeitures may also

apply. However, CompTel maintains its view that monetary remedies alone will not be enough to deter ILEC discrimination. Thus, CompTel also reaffirms its support for conditioning retention of RBOC interLATA authority (once granted) on an RBOC's compliance with the requirements of Sections 251, 252 and 271 and the Commission's rules promulgated thereunder (including the requirement of nondiscriminatory access to OSS). Specifically with respect to the Commission's OSS rules, an RBOC that fails to provide nondiscriminatory access to OSS should be prohibited from signing-up and serving new long distance customers until they are able to demonstrate parity in their provisioning of access to OSS.

B. The Commission Should Establish an "Accelerated Docket" Option for Complaints Alleging Violations of Sections 251, 252 and 271-275 of the Act

As CompTel noted in its Comments filed in CC Docket No. 96-238, the Commission's formal complaint process is likely to become an increasingly important as competition develops and deregulation is made possible by that development.[32] Here, CompTel reiterates it support for the Commission's proposed "Accelerated Docket" option[33] for complaints within the Commission's jurisdiction alleging violations of Sections 251, 252 and 271-275.[34] CompTel believes that the accelerated procedures and live hearing incorporated into the Commission's Accelerated Docket proposal are particularly well suited for OSS related disputes.[35]

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32 CompTel Comments, CC Docket 96-238, at 2.

33 CompTel also reiterates its view that participation in the Accelerated Docket should be voluntary for the complainant, provided the case meets the applicable eligibility criteria. In some cases, the abbreviated procedures of the Accelerated Docket may not be appropriate for resolution of the precise claim asserted, making use of the Commission's traditional formal complaint procedures more appropriate. *Id.* at 3, 6-7.

34 *Id.* at 3.

35 Wherever possible, the Commission should coordinate resolution of OSS complaints with the appropriate State commission or commissions. *Id.* at 6.

Because OSS is essential to competitive entry, allegations that an ILEC is failing to meet its obligation to provide access to OSS in a just, reasonable and nondiscriminatory manner should be resolves as expeditiously as possible. The condensed time frames proposed for the Accelerated Docket would ensure rapid disposition of these claims. The live testimony and concomitant cross examination offered by the Accelerated Docket proposal should provide a superior way of ferreting-out discriminatory behavior that could otherwise be masked in paper pleadings.[36] To the extent adoption of the Accelerated Docket results in the development of a "competition court" that is uniquely familiar with local competition issues, it also seems most appropriate for OSS related claims to be decided in that context.[37]

Finally, because an ILEC's failure to provide nondiscriminatory access to OSS can cripple a CLEC's ability to enter and compete in local markets, the Commission must be sure to incorporate in an order adopting its Accelerated Docket proposal explicit provisions for obtaining injunctive relief. In some cases, even the condensed procedures of the proposed Accelerated Docket will not be able to be completed in time to prevent irreparable damage to the complainant. As CompTel explained in its Accelerated Docket Comments, "[t]he Commission clearly has the power to order injunctive relief, whether on a permanent or interim basis.[38]

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36 *See id.* at 4-5.

37 *See id.* at 5.

38 *Id.* at 8 (citing *General Tel. Co. of California v. FCC,* 413 F.2d 390 (D.C. Cir. 1969), *cert. denied,* 396 U.S. 888 (FCC has authority under 47 U.S.C. § 312 to issue cease and desist orders in Title II cases) and *Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Docket No. 96-238 (rel. Nov. 25, 1997), ¶ 159 (FCC has authority under Section 4(i) to provide interim relief)).

Conclusion

For the foregoing reasons, as well as those contained in the LCI/CompTel Petition and in CompTel's comments and replies made thereon, the Commission should adopt *enforceable* rules and policies that establish minimum national default performance standards, measurements and reporting requirements. Because local competition has waited long enough, CompTel urges the Commission to take the actions recommended herein this summer.

Respectfully submitted,

THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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June 1, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Comments of the Competitive Telecommunications Association" were served this 1st day of June, 1998, by hand, on the following:

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